

PLANNED DEVELOPMENT PERMIT AMENDMENT

FILE NO. PDA15-013-02

LOCATION OF PROPERTY Southwest corner of Asana Way and Capitol Expressway

ZONING DISTRICT A(PD) Planned Development (File No. PDC10-022)

GENERAL PLAN DESIGNATION Neighborhood/Community Commercial, Urban Village

PROPOSED USE Planned Development Permit Amendment to modify site plan for Retail Areas A & B (total 16.34 acres) of the planned development (File No. PD15-013) to decrease the retail square footage from 215,230 to 209,780; allow a drive-through use; modify the layout of the retail buildings and the commercial loading and circulation areas within the southern portion of the site; and make minor changes to the retail parking area and building architecture.

ENVIRONMENTAL STATUS Addendum to the Evergreen East Hills Vision Strategy Final Environmental Impact Report (Resolution No. 73570, adopted on December 12, 2006), Supplemental Environmental Impact Report (SCH #2005102007), and the Envision San Jose 2040 General Plan Final Environmental Impact report, Supplemental Environmental Impact report (SCH #200972096) and Addenda thereto.

OWNER/APPLICANT Arcadia Development Co.
P.O. Box 5368
San Jose, CA 95150

APPLICANT/ADDRESS Storm Land LLC
10121 Miller Avenue, #120
Cupertino, CA 95014

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as following for this proposed project:

1. **Project Description.** This is a Planned Development Permit Amendment to modify site plan for Retail Areas A & B (total 16.34 acres) of the planned development (File No. PD15-013) to decrease the retail square footage from 215,230 to 209,780; allow a drive-through use at Building S5; modify the layout of the retail buildings and the commercial loading and circulation areas within the southern portion of the site; and make minor changes to the retail parking area and building architecture.
2. **Site Description.** The 16.53-acre project site is located at the southwest corner of Asana Way and Capitol Expressway and is a part of the overall 81-acre planned development approved under File No. PD15-013. Eastridge Shopping Center is located to the north of the 81-acre site, across Quimby Road. To the east of the project site across Capitol Expressway is a mobile home park. To the south of the project site are a mobile home park and a middle school. To the west of the project site is planned for residential development under File No. PD15-013. To the north of the project site is planned for commercial development under File No. PD15-013.
3. **General Plan.** The General Plan Land Use/Transportation Diagram designations for the subject site is Neighborhood/Community Commercial (NCC). Commercial retails are allowed within this land use designation. The project is also within Arcadia/Eastridge Urban Village area (local transit urban village). Urban Village plans promote walkable communities. This project is somewhat unique however in that there is no adopted Urban Village plan; rather, the Planned Development Zoning and conceptual site plans reflect Urban Village concepts with some areas being specifically pedestrian oriented (North and South Loop areas) and others being more auto oriented in nature (retail areas south of Evergreen Place-Retail Areas A & B.) These more auto-oriented areas do support Urban Village concepts in that the retail buildings line the streets. The project proposes drive-through use near the corner of Asana Way and South Breeze Loop. This drive-through use is less consistent with Urban Village concepts, however, it does not change the previously approved pedestrian circulation pattern under PD15-013; and the drive-through building is designed to be more in character with Urban Village goals. Therefore, the project is consistent with the NCC/Urban Village General Plan land use designation.
4. **Zoning District.** The project site is located in the A(PD) Planned Development Zoning District, File No. PDC10-022 (Ordinance No. 29519), which was approved on December 16, 2014 to allow for the construction of up to 344,000 square feet of retail commercial uses, 250 residential dwelling units, approximately 17.2 acres of public parkland and subsequent subdivision.
 - a. **Land Use.** Per the General Development Standards, this 81-acre site is entitled to have 250 residential units and up to 344,000 square feet of commercial retail space. The approved PD15-013 includes 314,898 square feet of commercial retail space, among which Retail Areas A & B have a total commercial area of 215,230 square feet. The project proposes to decrease the commercial area in Retail Areas A & B from 215,230 square feet to 209,780 square feet.

PDC10-022 allows all permitted, special and conditional uses within Commercial Pedestrian (CP) and Commercial Neighborhood (CN) Zoning Districts of Title 20 of the San Jose Municipal Code. Drive-through use is allowed through a Conditional

Use Permit within CN Zoning District. Therefore, the drive-through use is allowed within this PDC10-022 area through a Planned Development Permit Amendment.

- b. **Parking.** Parking shall be provided per the requirements stated in Chapter 20.90 of the San Jose Municipal Code.

Vehicle parking: Per Table 20-190 under Zoning Code Section 20.90.060.B, for neighborhood shopping center, the vehicle parking requirement is one space per 225 square feet of the net floor area. The project site is located within an Urban Village. Twenty percent parking reduction can apply to this project per Zoning Code Section 20.90.220.A.1.a if the project provides required bike parking spaces. The required vehicle parking for this project with 20% reduction is 634 spaces ($0.8 \times 0.85 \times 209,780/225$). The project provides a total of 687 vehicle parking spaces.

Bike parking: The project requires 60 ($0.85 \times 209,780 / 3,000$) bicycle parking spaces. The project provides 52 bicycle parking spaces.

Motorcycle Parking: One motorcycle space per 20 code required auto parking spaces is required. The project requires 32 ($634/20$) motorcycle parking spaces. The project provides 14 motorcycle parking spaces.

A Permit Adjustment application is required to modify the site plan to provide sufficient bicycle and motorcycle parking spaces, prior to issuance of grading permits.

- c. **Setbacks.** The commercial buildings meet the following required setbacks: five foot front setback, five foot side setbacks, no setbacks for interior lots, and 10 foot rear setback.
- d. **Height.** The maximum allowable height for commercial buildings is 60 feet. The project proposes building heights ranging from 27 feet to 36 feet.
5. **Environmental Review.** An Addendum to the Evergreen East Hills Vision Strategy Final Environmental Impact Report, Supplemental Environmental Impact Report (SCH #2005102007), and the Envision San Jose 2040 General Plan Final Environmental Impact report, Supplemental Environmental Impact report (SCH #200972096) and Addenda thereto was prepared for the project under the provisions of the environmental review requirements the California Environmental Quality Act of 1970, as amended (CEQA), including the state and local implementing regulations. The CEQA Guidelines Section 15164 state that when an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines that either substantial changes are proposed to the project which will require major revisions to the previous EIR, substantial changes will occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, or new information of substantial importance is available. The Addendum analyzed the impact of truck circulation and truck loading changes within the southern portion of the project site, the new drive-through use to an already approved retail use, and the modification to the site layout. The Addendum concluded that the proposed project would not result in any new impacts not previously disclosed in the EEHVS EIR and EEHVS Supplemental EIR; nor would it result in a substantial increase in the magnitude of any significant environmental impact previously identified in the EEHVS EIR and Supplement EIR.

Planned Development Amendment Findings.

The Director, the Planning Commission on appeal, or the City Council as appropriate, may

issue a Planned Development Permit Amendment Section 20.100.950 of the Zoning Code only if all of the following findings are made:

1. The Planned Development Permit Amendment does not negate any of the required findings of the previously approved Planned Development Permit (File No. PD15-013), as issued, and furthers the policies of the General Plan.

The Planned Development Permit Amendment is consistent with the site's General Plan Land Use/Transportation Diagram designation of Neighborhood Community Commercial and Urban Village as discussed above. The project furthers the policies of the General Plan in that the proposed project will allow the construction of 209,780 square feet of commercial/retail space. The amount of retail that can be provided on this site has potential to provide a variety of amenities that residents will need on a daily basis. Additionally, this project is an infill development of a site that has long been vacant, which is consistent with the General Plan's goals of allowing growth in infill development areas to create a more complete community.

2. The Planned Development Permit Amendment, as issued, conforms in all respects to the Planned Development Zoning of the property.

As described above, the project will conform in all respects to the Planned Development Zoning of the property (File No. PDC10-022) in that the setbacks, height, uses and vehicle parking conform to the Development Standards and a Permit Adjustment is required to file subsequently to provide sufficient bike parking and motorcycle parking spaces.

3. The Planned Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

The project is consistent with the following applicable City Council policies:

- *The project is consistent with the Evergreen-East Hills Development Policy (EEHDP) in that the project does not exceed the maximum allowable commercial square footage approved under PD15-013 and would not generate new additional vehicle trips. The local transportation analysis for this project dated February 8, 2019 prepared by Public Works Department also concludes that with the inclusion of permit Conditions # 13.2, the project will be in conformance with EEHDP.*
- *The proposed drive-through use complies with the Council Policy 6-10, Criteria for Review for Drive-Through Uses, in that it provides sufficient vehicle stacking lane that is screened from major streets by columns, lower screen walls and landscaping, the architecture is compatible and harmonize with the commercial buildings, and the pedestrian crossings are designed to use high visibility materials with pedestrian warning signs.*
- *The project is in compliance with Council Policy 6-30, Public Outreach Policy in that the project site was posted with a project information sign, and a notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website.*

4. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible, and aesthetically harmonious.

The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are still

appropriate, compatible and aesthetically harmonious, in that the project does not propose major changes on the site plan and architecture. The building scale and mass are similar to the previously approved plan. The drive-through building is designed to be in harmony with the surrounding buildings.

5. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

An Addendum to the Evergreen East Hills Vision Strategy Final Environmental Impact Report, Supplemental Environmental Impact Report (SCH #2005102007), and the Envision San Jose 2040 General Plan Final Environmental Impact report, Supplemental Environmental Impact report (SCH #200972096) and Addenda thereto was prepared for the project. The Addendum analyzed the impact of truck circulation and truck loading changes within the southern portion of the project site, the new drive-through use to an already approved retail use, and the modification to the site layout. The Addendum concluded that the proposed project would not result in any new impacts not previously disclosed in the EEHVS EIR and EEHVS Supplemental EIR; nor would it result in a substantial increase in the magnitude of any significant environmental impact previously identified in the EEHVS EIR and Supplement EIR.

In accordance with the findings set forth above, a Planned Development Permit Amendment for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit Amendment plans entitled “Planned Development Permit Amendment-Arcadia Development Co.-Evergreen Circle”, dated February 13, 2019 on file with the Department of Planning, Building, and Code Enforcement, and to the San Jose Building Code (San Jose Municipal Code, Title 24), with the exception of any subsequently approved changes.
4. **Conformance with Approved Zoning and Planned Development Permit.** All conditions of approval and required environmental mitigation measures from the previously approved Planned Development Zoning (File No. PDC10-022) and Planned Development Permits (PD15-013 & PD15-013-01) remain in effect except as modified by this permit.
5. **Drive-Through Use Authorization.** This Permit Amendment allows a drive-through use at Building S5 as shown on the plan entitled “Planned Development Permit Amendment-Arcadia Development Co.-Evergreen Circle”, dated February 13, 2019 on file with the Department of Planning, Building, and Code Enforcement. The drive-through use shall operate between 6:00am to 12:00am.
6. **Permit Adjustment.** Prior to issuance of grading permits, a Permit Adjustment application is required to modify the site plan to provide at least 60 bicycle parking spaces and 32 motorcycle parking spaces on site.
7. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
8. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Conformance to Mitigation Measures.** This project shall conform to all applicable Mitigation Measures:
 - a. **Air Quality**
 - i. MM 4.4-16 New bus stops shall be constructed at convenient locations with pedestrian access to the project sites. Pullouts will be designed so that normal traffic flow on arterial roadways would not be impeded when buses are pulled over to serve riders.
 - ii. MM 4.4-17 Bicycle amenities shall be provided on each of the EEHVS opportunity sites. Each site will be reviewed and appropriate bicycle amenities shall be included. As appropriate, this shall include secure bicycle parking for office and retail employees, bicycle racks for retail customers and bike lane connections throughout each project site.
 - iii. MM 4.4-18 All buildings shall include outdoor electrical outlets so as to encourage the use of electrical landscape maintenance equipment.

b. Biological Resources

- i. MM 4.6-16 A qualified ornithologist shall conduct a protocol-level, pre-construction survey for nesting raptors onsite not more than 30 days prior to the onset of ground disturbance or tree removal, if disturbance is to occur during the breeding season (Feb. 1 to Aug. 31).
- ii. MM 4.6-17 If a nesting raptor is detected, an appropriate construction buffer shall be established. Actual size of buffer will be determined by the ornithologist and will depend on species, topography, and type of construction activity that would occur in the vicinity of the nest but would be a minimum of 250 feet.
- iii. MM 4.6-18 A report summarizing the results of the pre-construction survey and subsequent efforts to protect nesting raptors (if found to be present) shall be submitted to the Director of PBCE.
- iv. MM 4.6-1 The site design and PD Permit approval, as well as any public improvements, shall incorporate preservation of existing trees to the maximum extent practicable, to the satisfaction of the City's Director of Planning, Building, and Code Enforcement (PBCE).
- v. MM 4.6-3 The species and exact number of trees to be planted on the site during the construction phase shall be determined in consultation with the City Arborist and to the satisfaction of the Director of the Department of PBCE.

c. Cultural Resources

- i. MM 4.5-1 Prior to the start of construction, the two areas encompassed by CA-SCL-215 and CASCL-327, including a sufficient buffer determined by an archaeologist, shall undergo additional testing. The delineation of the areas to be tested shall be based upon the figures and information contained in the following report: "Subsurface Archaeological Testing: Evergreen Smart Growth Strategy Study Area (Arcadia Homes Site)", Holman & Associates, December 2004. Testing shall consist of controlled mechanical stripping, under the direction of a qualified archaeologist, within the two delineated areas.
- ii. Controlled stripping shall continue until all archaeological material is removed, or to the maximum depth construction impacts will occur in a given area. Once the controlled stripping has been completed, the archaeologist shall determine whether any monitoring of actual construction is warranted.
- iii. If suspected human bone or important archaeological features are encountered, work in the immediate area of the discovery shall be halted. The finds shall be exposed, recorded, and removed by an archaeologist. Any human remains encountered shall be handled in accordance with State law and any applicable Native American agreements.
- iv. All human remains and burial-associated artifacts shall be repatriated in a location that will not be subject to further disturbance. Using professionally-accepted methods, all archaeological resources shall be catalogued and analyzed and a report summarizing such work shall be prepared and provided to the City's Director of Planning, Building, & Code Enforcement.

d. Geology & Soils

- i. MM 4.7-1 A detailed, design-level geotechnical investigation for the project shall

be completed by the applicant and shall be reviewed and approved by the City Geologist prior to Public Works clearance and issuance of a PD Permit for any phase of the project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid potential geologic hazards on the site.

e. Noise

- i. MM 4.3-4 Where pile drivers are needed, the use of multiple-pile drivers shall be considered in order to expedite construction. Although noise levels generated by multiple pile drivers would be higher than the noise generated by a single pile driver, the total duration of pile driving activities would be reduced.
- ii. MM 4.3-5 Temporary noise control blanket barriers shall shroud pile drivers or be erected in a manner to shield the adjacent land uses. Such noise control blanket barriers can be rented and quickly erected.
- iii. MM 4.3-6 Where feasible, foundation pile holes shall be pre-drilled to minimize the number of impacts required to seat the pile. Pre-drilling foundation pile holes is a standard construction noise control technique. Pre-drilling reduces the number of blows required to seat the pile.
- iv. MM 4.3-8 Consideration shall be given to locating the commercial uses closest to Quimby Road and Capitol Expressway. This would allow the commercial uses to shield the more sensitive uses (i.e., residences and parks) from elevated traffic noise levels.
- v. MM 4.3-9 All outdoor use areas associated with the proposed residences shall be designed and sited so that noise levels do not exceed a Ldn of 60 dBA. This will be accomplished through site design (e.g., creating sufficient buffers/setbacks between noise sources and these areas, shielding such areas from noise sources by locating them behind buildings, etc.) and/or constructing soundwalls.
- vi. MM 4.3-10 In the event that residential patios are constructed in locations where the Ldn is not reduced to 60 dBA by the steps described in the previous measure, such patios shall be designed to include acoustically-effective (i.e., without cracks, gaps, openings, etc.) fencing.
- vii. MM 4.3-11 All residences, both single- and multi-family, shall be designed to achieve an interior noise level of 45 dBA Ldn. In some cases, this will require residents to keep windows closed, which will mandate the inclusion of forced-air mechanical ventilation systems. Compliance with this measure shall be demonstrated through the preparation of a detailed acoustical analysis, such analysis to be reviewed and approved by the City.
- viii. MM 4.3-12 The project shall be designed so that noise from the commercial uses will not exceed a Ldn of 55 dBA at the property lines of existing/future residences. This will be accomplished by proper site design (e.g., setbacks, locating loading docks away from residences).

f. Public Services

- i. MM 5.3-1 All residential development shall comply with state law regarding the payment of school impact fees.
- ii. MM 5.4-1 All residential development shall comply with the requirements of the

City's PIO and PDO ordinances.

- iii. MM 4.13-2 The developer shall provide payment of the TIF to the City prior to the issuance of building permits.

11. Preconstruction Survey for Burrowing Owls (as required by the Habitat

Conservation Plan). Prior to any ground disturbance related to covered activities, a qualified biologist will conduct preconstruction surveys in all suitable habitat areas as identified during habitat surveys. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on the project site, particularly in areas within 250 feet of construction activity. To maximize the likelihood of detecting owls, the preconstruction survey will last a minimum of three hours. The survey will begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites. A minimum of two surveys will be conducted (if owls are detected on the first survey, a second survey is not needed). All owls observed will be counted and their location will be mapped.

Surveys will conclude no more than two (2) calendar days prior to construction. Therefore, the project proponent must begin surveys no more than four (4) days prior to construction (two days of surveying plus up to two days between surveys and construction). To avoid last minute changes in schedule or contracting that may occur if burrowing owls are found, the project proponent may also conduct a preliminary survey up to 14 days before construction. This preliminary survey may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction.

- a. If evidence of western burrowing owls is found during the breeding season (February 1–August 31), the project proponent will avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance will include establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone. Construction may occur inside of the 250-foot non-disturbance buffer during the breeding season if:
 - i. The nest is not disturbed,
 - ii. The project proponent develops an avoidance, minimization, and monitoring plan that will be reviewed by the Implementing Entity and the Wildlife Agencies prior to project construction based on the following criteria.
 - iii. The Implementing Entity and the Wildlife Agencies approve of the avoidance and minimization plan project by the project applicant.
 - iv. A qualified biologist monitors the owls for at least three (3) days prior to construction to determine baseline nesting and foraging behavior (i.e., behavior without construction).
 - v. The same qualified biologist monitors the owls during construction and finds no change in owl nesting and foraging behavior in response to construction activities.

- vi. If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer. Construction cannot resume within the 250-foot buffer until the adults and juveniles from the occupied burrows have moved out of the project site.
 - vii. If monitoring indicates that the nest is abandoned prior to the end of nesting season and the burrow is no longer in use by owls, the non-disturbance buffer zone may be removed. The biologist will excavate the burrow to prevent reoccupation after receiving approval from the Wildlife Agencies.
 - b. During the non-breeding season (September 1–January 31), the project proponent will establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if the following criteria are met in order to prevent owls from abandoning important overwintering sites.
 - i. A qualified biologist monitors the owls for at least 3 days prior to construction to determine baseline foraging behavior (i.e., behavior without construction).
 - ii. The same qualified biologist monitors the owls during construction and finds no change in owl foraging behavior in response to construction activities.
 - iii. If there is any change in owl nesting and foraging behavior as a result of construction activities, these activities will cease within the 250-foot buffer. If the owls are gone for at least one week, the project proponent may request approval from the Implementing Entity that a qualified biologist excavate usable burrows to prevent owls from re-occupying the site. After all usable burrows are excavated, the buffer zone will be removed and construction may continue.
 - c. Monitoring must continue as described above for the non-breeding season as long as the burrow remains active.
 - i. A qualified biologist will monitor the project site consistent with the requirements of the breeding and non-breeding season avoidance measures listed above to ensure that buffers are enforced and owls are not disturbed. The biological monitor will also conduct training of construction personnel on the avoidance procedures, buffer zones, and protocols in the event that a burrowing owl flies into an active construction zone. It should be noted that all elements of Condition 15 of the SCVHP shall be followed. Passive relocation of burrowing owls would not be allowed until positive growth trend described in Section 5.4.6 of the SCVHP is achieved. An application for exemption to this prohibition can be requested and will be reviewed by the Implementing Entity on a case by case basis.
12. **Reciprocal access.** Any subsequent tentative maps for the subject property shall include a reciprocal parking and access agreement for all parcels of the property.
13. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised

to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.

- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
- b. **Transportation:**
 - i. This project is located in the Evergreen East Hills Development Policy area and is required to pay a Traffic Impact Fee (TIF). The 2019 TIF per residential unit is \$16,357 and per 1,000 square feet of commercial or office is \$14,223. This fee is subject to an annual escalation on January 1st per the Engineering News-Record Construction Cost Index for San Francisco. We conclude that the subject project will be in conformance with the Evergreen East Hills Development Policy. The project will be required to pay the current rate in effect at the time the Public Works Clearance is issued.
 - ii. A Traffic Operations Analysis (TOA) has been performed for this project based on 199 AM and 323 PM peak hour trips. We conclude that the subject project will be in conformance with both the Evergreen East Hills Development Policy and Council Policy 6-10, Drive-Through Policy. See separate Traffic memo dated 02/08/19 for additional information. The following conditions shall be implemented:
 - 1) Restrict the southernmost Capitol Expressway driveway to truck access only and install appropriate signage.
 - 2) Direct WB-67 large delivery trucks to US-101/Tully Road and US-680/Capitol Expressway to access the Capitol Expressway driveways. Large delivery trucks should avoid traveling north bound on Capitol Expressway to access the Capitol Expressway southernmost driveway to prevent U-turn movement on Capitol Expressway/Evergreen Place.
 - 3) Conduct a post-occupancy study to evaluate truck access and circulation approximately six months after opening, (avoiding holiday season), the analysis should be submitted within 12 months of Costco opening to members. The analysis should evaluate truck circulation and include truck counts at Capitol Expressway/Evergreen Loop and the southern driveway, as well as operational issues attributable to Costco trucks at Capitol/Nieman and Capitol/Evergreen Loop.
 - 4) Close the drive aisle connection between the entry throat and the first drive aisle using traffic cones if the drive-through overflow extends into the adjacent drive aisle.
 - 5) Install high visibility materials for the crosswalk and the pedestrian warning signs at the entry/exit points of the drive-through.
- c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged

(slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10 year storm event.

- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
 - iv. Because this project involves a land disturbance of one or more acres, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
 - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations shall conform with City Policy 6-29.
 - ii. At the implementation phase, a loading dock detail shall be provided showing a 6' minimum overhang over the entire length of the loading dock area for parcel A. The area under the 6' minimum overhang shall be plumbed to sanitary sewer. Stormwater runoff shall not be directed towards the loading/unloading areas under the overhang.
 - iii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
 - iv. A post construction Final Report is required by the Director of Public Works from a Civil Engineer retained by the owner to observe the installation of the BMPs and stating that all post construction storm water pollution control BMPs have been installed as indicated in the approved plans and all significant changes have been reviewed and approved in advance by the Department of Public Works.

- e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- f. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- h. **Municipal Water:** In accordance with City Ordinance #23975, Major Water Facilities Fee is due and payable. Contact Amado Valdez at (408) 794-6769 for further information.
- i. **Assessments:** This project is located within the boundaries of Community Facilities District No. 17 (Capitol Expy – Evergreen Place), which maintains enhanced landscaping in median islands, pork chop islands, roundabouts and parkstrips, plus decorative crosswalks. Properties within the district pay for the maintenance through annual special taxes, which are adjusted annually by the Consumer Price Index, commencing in the fiscal year 2019-2020. The 2019-2020 maximum special tax is calculated at \$396.64 per residential unit, \$880.48 per acre for non-residential uses, and \$586.98 per acre for undeveloped uses. Future year special taxes will be collected through the County property tax bills. Any questions may be directed to Thomas Borden at (408) 535-6831.
- j. **Street Improvements:** See PD15-013 PW Final Memo dated 11/16/15 for original project conditions. The following conditions shall be implemented per PDA15-013-02:
 - i. Construct modified driveway (southern driveway) along Capitol Expressway project frontage. The southern driveway shall be truck access only and shall be signed accordingly.
 - ii. Construct 40' wide modified driveway along S. Evergreen Loop (easterly driveway along the northern property line).
 - iii. Construct up to 30' wide modified driveway along S. Evergreen Loop (westerly driveway along the northern property line).
 - iv. Construct up to 30' wide modified driveway along Evergreen Place along the northern property line.
 - v. Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
 - vi. Developer shall be responsible for adjusting existing utility boxes/vaults to grade, locating and protecting the existing communication conduits (fiber optic and copper) along the project frontage.
 - vii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
 - viii. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- k. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- l. **Street Trees:**
 - i. The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
 - ii. Show all existing trees by species and diameter that are to be retained or removed. Obtain a street tree removal permit for any street trees that are over 6 feet in height that are proposed to be removed.
- m. **Referrals:** This project should be referred to the County Roads and Airports Department and Santa Clara Valley Water District.
- n. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- o. **Revocation, Suspension, Modification.** This Planned Development Permit Amendment may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - i. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - ii. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - iii. The use as presently conducted creates a nuisance.

APPROVED on this 20th day of February, 2019.

Rosalynn Hughey, Director
Planning, Building, and Code
Enforcement

Deputy